

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CHARLES N. BELSSNER,

Case No. 2:17-cv-02016-JCM-GWF

**Plaintiff,**

V.

LAS VEGAS METROPOLITAN POLICE  
DEPARTMEN.,

Defendant.

ORDER

12 This matter is before the Court on Plaintiff's Application for Leave to Proceed *In Forma*  
13 *Pauperis* (ECF No. 1), filed on July 24, 2017.

## **BACKGROUND**

Plaintiff's complaint alleges that he approached a police officer stopped in her vehicle to report a motorist driving without using headlights. He further alleges that he was restrained in handcuffs by police officers, that the police officers accused him of banging on the vehicle driving without headlights, and that the police officers issued him a citation.

## DISCUSSION

## 20 || I. Application to Proceed in *Forma Pauperis*

Plaintiff filed this instant action and attached a financial affidavit to his application and complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

## 25 || II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to

1 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which  
2 relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is  
3 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be  
4 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a  
5 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to  
6 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be  
7 dismissed as frivolous if it is premised on a nonexistent legal interest or delusional factual  
8 scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual  
9 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly  
10 incredible, whether or not there are judicially noticeable facts available to contradict them.”  
11 *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under §  
12 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing  
13 its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be  
14 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

15 The Court shall liberally construe a complaint by a pro se litigant. *Eldridge v. Block*, 832  
16 F.2d 1132, 1137 (9th Cir. 2007). This is especially important for civil rights complaints. *Ferdik*  
17 *v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). However, a liberal construction may not be  
18 used to supply an essential element of the claim absent from the complaint. *Brunsv. Nat'l*  
19 *Credit Union Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Board of Regents*, 673  
20 F.2d 266, 268 (9th Cir. 1982)).

21 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a  
22 complaint for failure to state a claim upon which relief can be granted. Review under Rule  
23 12(b)(6) is essentially a ruling on a question of law. See *Chappel v. Laboratory Corp. of*  
24 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a “short  
25 and plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P.  
26 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not  
27 require detailed factual allegations, it demands “more than labels and conclusions” or a  
28 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937,

1 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true  
2 all well-pled factual allegations contained in the complaint, but the same requirement does not  
3 apply to legal conclusions. *Iqbal*, 129 S.Ct. at 1950. Mere recitals of the elements of a cause of  
4 action, supported only by conclusory allegations, do not suffice. *Id.* at 1949. Secondly, where  
5 the claims in the complaint have not crossed the line from plausible to conceivable, the  
6 complaint should be dismissed. *Twombly*, 550 U.S. at 570.

7 **III. Instant Complaint**

8       **a. Subject Matter Jurisdiction**

9       Federal district courts are courts of limited jurisdiction, deriving their power to hear cases  
10 from specific congressional grants of jurisdiction. *United States v. Sumner*, 226 F.3d 1005, 1009  
11 (9th Cir. 2000). Limited jurisdiction means that federal courts (1) possess only that power  
12 authorized by the Constitution or a specific federal statute and (2) do not have jurisdiction over a  
13 matter simply because the alleged wrong occurred in the same city, county, or state in which the  
14 court sits. *See* U.S. Const. art. III, § 2, cl. 1. Generally, subject matter jurisdiction may derive  
15 from diversity of the parties, which are “civil actions where the matter in controversy exceeds the  
16 sum or value of \$75,000 ... and is between citizens of different States,” or from claims involving  
17 a federal question, which are “civil actions arising under the Constitution, laws, or treaties of the  
18 United States.” *See* 28 U.S.C. § 1331; 28 U.S.C. § 1332.

19       Rule 8(a)(1) of the Federal Rules of Civil Procedure states that a “claim for relief must  
20 contain ... a short plain statement of the grounds for the court’s jurisdiction.” Fed. R. Civ. P.  
21 8(a)(1). The burden of proving jurisdiction rests on the party asserting jurisdiction. *See McNutt*  
22 *v. Gen. Motors Acceptance Corp.* 298 U.S. 178, 182–83 (1936). Plaintiff’s complaint alleges  
23 that the grounds for the Court’s jurisdiction is “pursuant to Code of Conduct under the Shield of  
24 Law to perform the peoples [sic] law.” *See Complaint* (ECF No. 1-1), 4. Plaintiff does not  
25 provide a sufficient statement of the grounds for the court’s jurisdiction nor does the complaint  
26 contain allegations demonstrating that the Court has jurisdiction.

1                   **b. Municipal Entity Liability Under § 1983 – *Monell* Claim**

2                   Section 1983 creates a path for the private enforcement of substantive rights created by  
3                   the Constitution and Federal Statutes. *Graham v. Connor*, 490 U.S. 386, 393–94 (1989).  
4                   Section 1983 suits against local governments alleging constitutional rights violations by  
5                   government officials cannot rely solely on respondeat superior liability. *See Whitaker v.*  
6                   *Garcetti*, 486 F.3d 572, 581 (9th Cir. 2007); *see also Monell v. Dep’t of Soc. Servs.*, 436 U.S.  
7                   658, 691 (1978). A plaintiff can bring a § 1983 action against a local government entity if the  
8                   plaintiff can show that the entity had an established policy or custom that caused employees who  
9                   implemented the policy or custom to violate the constitutional rights of others. *Monell*, 436 U.S.  
10                  at 690–92; *see also, Van Ort v. Estate of Stanewich*, 92 F. 3d 831 (9th Cir. 1996). However,  
11                  absent such a policy or custom, a local government entity cannot be held liable solely because  
12                  one of its employees commits an unlawful wrong against another. *Id.* at 691. In other words,  
13                  under *Monell*, when a municipal policy of some nature is the “driving force” behind an  
14                  unconstitutional action taken by municipal employees, the municipality will be liable. *Id.*

15                  Here, Plaintiff names the Las Vegas Metropolitan Police Department as the sole defendant  
16                  in his complaint. Although unclear, Plaintiff alleges that two police officers falsified a citation  
17                  that they issued him. Plaintiff does not identify a constitutional violation and Plaintiff does not  
18                  demonstrate what policy or custom LVMPD implemented that was the driving force behind the  
19                  officers’ alleged conduct. To the extent that Plaintiff intends to bring a § 1983 claim against  
20                  LVMPD, the Court dismisses such claim without prejudice, and will give Plaintiff leave to amend  
21                  his complaint to state sufficient facts to state a claim, if he is able to do so.

22                   **c. Unlawful Arrest**

23                  Plaintiff does not provide enough factual or legal basis, beyond conclusory allegations, to  
24                  adequately state a claim. *See Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992) (Vague and  
25                  conclusory allegations of official participation in civil rights violations are not sufficient to state  
26                  a claim under Section 1983.) (citing *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).  
27                  To the extent that Plaintiff is seeking private enforcement of substantive rights created by the  
28                  Constitution and Federal Statutes, he may do so under the auspices of 42 U.S.C § 1983 and must

1       allege as such in his complaint. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). However, in  
2       order to state a claim under § 1983, a plaintiff “must allege the violation of a right secured by the  
3       Constitution and the laws of the United States, and must show that the alleged deprivation was  
4       committed by a person acting under color of law.” *West v. Atkins*, 487 U.S. 42, 48-49 (1988);  
5       see also *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982).

6           A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth  
7       Amendment. *Dubner v. City and County of San Francisco*, 266 F.3d 959, 964 (9th Cir.2001).  
8       To proceed on that basis, the plaintiff must demonstrate that there was no probable cause or other  
9       justification to arrest him. *Id.* Probable cause exists when the “facts and circumstances within  
10      the officer’s knowledge . . . are sufficient to warrant a prudent person, or one of reasonable  
11      caution, in believing, in the circumstances shown, that the suspect has committed, is committing,  
12      or is about to commit an offense.” *Michigan v. DeFillippo*, 443 U.S. 31, 37. The plaintiff bears  
13      the burden of proving the absence of probable cause. *Perez-Morciglio v. Las Vegas Metro.*  
14      *Police Dep’t*, 820 F. Supp. 2d 1111, 1121 (D. Nev. 2011) (citing *Beck v. City of Upland*, 527  
15      F.3d 853, 864 (9th Cir.2008)).

16           Plaintiff alleges that he was restrained in handcuffs by the police officers and may be  
17       attempting to set forth a claim for unlawful arrest. The Court will provide Plaintiff leave to  
18       amend his complaint to the extent he intends to set forth a claim for unlawful arrest against the  
19       individual police officers as defendants. The Court, therefore, will dismiss Plaintiff’s complaint  
20       with leave to amend. Plaintiff is advised that he must provide the court with a proper factual and  
21       legal basis for his claims in his amended complaint.

22           If Plaintiff elects to proceed in this action by filing an amended complaint, he is informed  
23       that the court cannot refer to a prior pleading in order to make his amended complaint complete.  
24       Local Rule 15–1 requires that an amended complaint be complete in itself without reference to any  
25       prior pleading. This is because, as a general rule, an amended complaint supersedes the original  
26       complaint. See *Valdez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011); see *Loux v. Rhay*,  
27       375 F.2d 55, 57 (9th Cir.1967). Once Plaintiff files an amended complaint, the original pleading  
28       no longer serves any function in the case. Therefore, in an amended complaint, as in an original

1 complaint, each claim and the involvement of each defendant must be sufficiently alleged.  
2 Plaintiff is advised that litigation will not commence upon the filing of an amended complaint.  
3 Rather, the Court will need to conduct an additional screening of the amended complaint pursuant  
4 to 28 U.S.C. § 1915(e). If Plaintiff fails to file an amended complaint or fails to cure the  
5 deficiencies identified above, the Court will recommend that the complaint be dismissed with  
6 prejudice. Accordingly,

7 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *in Forma Pauperis* is  
8 **granted.** Plaintiff shall not be required to pre-pay the full filing fee of four hundred dollars  
9 (\$400.00).

10 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to  
11 conclusion without the necessity of prepayment of any additional fees or costs or the giving of  
12 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the  
13 issuance of subpoenas at government expense.

14 **IT IS FURTHER ORDERED** that Plaintiff's Complaint be **dismissed** without prejudice  
15 with leave to amend. Plaintiff shall have until **August 2, 2018** to file an amended complaint  
16 correcting the noted deficiencies.

17 Dated this 6th day of July, 2018.

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GEORGE FOLEY, JR.  
UNITED STATES MAGISTRATE JUDGE  
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